

SEP 10 1976

MICHAEL ROBAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM 1976

Case No. 76-131

CLIFFORD J. HYNNING AND CAROL H. SMITH,
Petitioners,

v.

GLADYS L. BAKER, ET AL.,
Respondent.

**REPLY BRIEF ON PETITION FOR A WRIT OF
CERTIORARI TO THE
SUPREME COURT OF VIRGINIA**

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The opposition brief by respondents argues that the constitutional question of due process hearing has not been timely raised, being first contained in the notice of appeal from the Circuit Court to the Supreme Court of Virginia. The constitutional requirements of the 14th Amendment are limitations on state power, not on the conduct of private litigants. The report of the Commissioner in Chancery was advisory only and had to be confirmed or denied by the Circuit Court. There could be no constitutional issue until the trial court had denied a due-process hearing. The earliest time, therefore, for the raising of the constitutional question was in the notice of appeal from the action of the Circuit Court. The constitutional issue was therefore raised in a timely fashion.

For the rest, the petitioners rest on their arguments presented in the petition for a writ of certiorari.

In concluding, they note that the mere repetition of a contention by the respondents does not add further weight or authority to that contention, such as that there was "evidence", circumstantial or otherwise, to support the finding of fraud. The record, of course, speaks for itself. It is regretted that the respondents did not deal with the specific discussion of the "evidence" in the form of the argument by respondents as the only "specific evidence" to survive in the circuit court, as set forth on pp. 6-10 of the petition.

Such verbal differences as may exist between the type-written petition and the final printed petition are stylistic only, resulting in a shorter petition.

We submit that these contentions by respondents are without merit.

Respectfully submitted,

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